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Title

ADMINISTRATIVE CODE ENFORCEMENT

Chapter 1 ADMINISTRATIVE CODE ENFORCEMENT

#-1-1. DECLARATION OF PURPOSE.

The City Council of Sandy City finds that the enforcement of the Revised Ordinances of Sandy City and applicable state codes throughout the City is an important public service. Code enforcement is vital to the protection of the public's health, safety, and quality of life. The City Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative code enforcement hearings and judicial proceedings. The City Council further finds that comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these regulations. Failure to comply with an administrative code enforcement action may require the City Attorney to file a judicial action to gain compliance.

#-1-2. SCOPE.

The provisions of this Title may be applied to all violations of the Revised Ordinances of Sandy City. It has been designed as an additional remedy for the City to use in achieving compliance of its ordinances.

#-1-3. DEFINITIONS.

"Abatement" Any action the city may take to remove or alleviate a violation, including, but not limited to, demolition, removal, repair, boarding up, securing or replacement of property.

"Administrative citation" means a citation issued to a responsible person that gives notice of a violation and the civil fee for such violation.

"Administrative order" means an order issued by an administrative hearing officer. The order may include an order to enter upon private property to abate a violation of Sandy City code, to pay civil fines and administrative costs, or take any other action as authorized or required by this title and applicable state codes.

"Administrative hearing officer" means a person appointed by the mayor or his designee to preside over administrative hearings.

"Code enforcement tax lien" A lien recorded with the county recorder and the county treasurer to facilitate collection of outstanding civil penalties, administrative fees, and costs.

"Cost, actual" means the cost of professional consultants, contractors, subcontractors and equipment incurred by the city to perform an abatement.

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"Cost, administrative" means costs incurred by the city, including wages, professional hearing officer services, supplies and overhead, to ensure compliance with the Revised Ordinances of Sandy City.

"Director" means Director of Community Development or the Director of Animal Services.

"Enforcement Official" A person authorized by the mayor to issue and pursue a notice of violation under this title.

"Itemized statement of costs" means a written notice to a responsible person, itemizing the city's actual costs and administrative cost of abating a code violation.

"Municipal action" means an administrative citation, an itemized statement of costs, or a notice of emergency abatement.

"Notice of emergency abatement" means a written notice that informs a responsible person of emergency abatement actions taken by the city and provides and itemized statement of costs for those actions.

"Responsible Person" or "Responsible Party" means the person(s) determined by the city who is responsible for causing or maintaining a violation of the Revised Ordinances of Sandy City, policies, regulations, or applicable state codes. The term "responsible person" shall include, but is not limited to, a property owner, and animal owner who is responsible for the violation of any provision of the Revised Ordinances of Sandy City, policies, regulations, or applicable state codes.

#-1-4. CRIMINAL PROSECUTION RIGHT.

The City has sole discretion in deciding whether to file a civil or criminal case for the violation of any of its ordinances. The City may choose to file both, or one or the other. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute City ordinance violations as criminal offenses. The City may use any of the remedies available under the law in both civil and criminal prosecution. If the City chooses to file both civil and criminal charges for the same day of violation, no civil penalties may be assessed, but all other remedies are available.

#-1-5. SERVICE OF NOTICE REQUIREMENTS.

- (a) Whenever a notice is required to be given under this title it shall be served by one of the following methods:
- i. Personal service;
 - ii. Regular mail, postage prepaid, to the last known address of a responsible person;
 - iii. Posting the notice conspicuously on or in front of the property that is the subject of the municipal action;
 - iv. Publication in a newspaper of general circulation if service has not been accomplished after reasonable efforts to comply with (a) i-iii above; or
 - v. As directed by the administrative hearing officer.

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- (b) Failure of a responsible person to actually receive notice shall not affect the validity of any action taken hereunder if notice has been served in the manner set forth above.
- (c) Service by regular mail in the manner set forth above shall be deemed served on the fourth day after the date of mailing.
- (d) The failure of a person, other than a responsible person, to be served notice in accordance with this section shall not affect the validity of any proceeding taken hereunder.

#-1-6. APPOINTMENT AND QUALIFICATIONS OF THE ADMINISTRATIVE HEARING OFFICER.

- (a) The mayor, with the consent of the city council, shall appoint an administrative hearing officer to preside at administrative hearings.
- (b) A person appointed to serve as an administrative hearing officer shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from any bias or conflict of interest that might affect impartiality of decisions.

#-1-7. POWERS OF ADMINISTRATIVE HEARING OFFICER.

- (a) An administrative hearing officer shall have authority to hold an administrative hearing for violations of the Revised Ordinances of Sandy City.
- (b) An administrative hearing officer may continue a hearing for good cause shown by one of the parties or if the administrative hearing officer independently determines that due process has not been adequately afforded to a party.
- (c) At the request of any party to an administrative hearing, an administrative hearing officer may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the administrative hearing officer to decide issues at the hearing. All costs related to the subpoena, including witness and mileage fines, shall be borne by the party requesting the subpoena.
- (d) The administrative hearing officer may reduce civil fines or fees upon a finding of good cause. The administrative hearing officer may reduce the fines to what is just and equitable under the circumstances; however, in connection with an appeal regarding an itemized statement of costs, the administrative hearing officer may not order the responsible person to pay less than actual costs incurred by the city and shall require the responsible person to pay the administrative costs as established in the consolidated fee schedule.
- (e) An administrative hearing officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of: granting a continuance; ordering compliance by issuing an administrative order; ensuring compliance of that order; authorizing the city to enter upon private property to inspect or abate a violation; modifying an administrative order, assessing costs of abatement; assessing civil fines; or, where extraordinary circumstances exist, granting a new hearing.

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- (f) An administrative hearing officer may require a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.
- (g) An administrative hearing officer shall not make any order that would require or allow a person to violate state law or city ordinance.

#-1-8. FAILURE TO ATTEND ADMINISTRATIVE HEARING.

A person who fails to appear at an administrative hearing shall be deemed to have waived all rights in connection with the hearing, including the right to appeal. Provided that proper notice of the hearing has been given as provided in #-1-5, an administrative order may be entered against a person based upon the failure to appear.

#-1-9. ADMINISTRATIVE ORDER.

- (a) A person and the city may enter into a stipulated agreement, which shall be signed by both parties. Such agreement may be entered as an administrative order. Entry of such agreement shall constitute a waiver of the right to an administrative hearing and the right to appeal.
- (b) Within ten days after all evidence and testimony are presented, the administrative hearing officer shall issue a written administrative order that affirms, rejects or modifies the itemized statement of costs, administrative citation, notice of emergency abatement or other municipal action.
- (c) The administrative order shall specify the evidence supporting the administrative hearing officer's decision and the action required to satisfy the order.
- (d) The administrative hearing officer may assign the party who prevails at the administrative hearing to prepare findings of fact and conclusions of law.
- (e) An administrative hearing officer may issue an administrative order that requires a person to cease from violating the Revised Ordinances of Sandy City and to take any necessary corrective action.
- (f) An administrative hearing officer may order the city to enter the property and abate all violations, including the removal of animals in violation of an applicable code requirement. Whenever an order of abatement is entered, the administrative hearing officer shall order the responsible person to pay to the city the actual costs of the abatement and the administrative costs of the city to perform the abatement.
- (g) An administrative hearing officer may revoke a hobby license, an animal license, the right to possess animals.
- (h) As part of an administrative order, an administrative hearing officer may establish specific deadlines for the payment of fines and costs, and condition the total or partial assessment of civil fines on the responsible person's ability to take necessary corrective actions by specified deadlines. Such fines shall continue to accrue until the responsible person complies with the administrative hearing officer's decision and corrects the violation.
- (i) An administrative order imposing civil fines for failure to abate a violation of the Revised Ordinances of Sandy City by a stated deadline, shall continue to accrue additional fines until the responsible person complies with the administrative hearing officer's decision and corrects the violation but

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shall not exceed the fine limit set by Utah State Code (76-3-S301). (Fine limits set by the state https://le.utah.gov/xcode/Title76/Chapter3/76-3-S301.html?v=C76-3-S301_2018050820190701)

- (j) An administrative hearing officer may schedule subsequent review hearings as may be necessary or as requested by the city to ensure compliance with an administrative order.
- (k) An administrative hearing officer may order a person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.
- (l) An administrative hearing officer may revoke or suspend a business license, a building permit, or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of real property or a structure where a violation is located as provided in Sandy City code.
- (m) An administrative order shall become final on the date of signing by an administrative hearing officer.
- (n) An administrative order shall be served on all parties.
- (o) An administrative hearing officer may take any action reasonably necessary to obtain compliance with the applicable city ordinances.
- (p) An administrative hearing officer may assess civil fines and costs of abatement and administrative costs to a responsible person.

#-1-10. FAILURE TO COMPLY.

- (a) It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in an administrative order.
- (b) A violation of this section shall be a class B misdemeanor.
- (c) Upon failure of a person to comply with the terms and deadline set forth in the administrative order, the city may use all appropriate legal means to recover the civil fines and administrative costs and to obtain compliance.

#-1-11. APPEAL.

- (a) Any person adversely affected by an administrative order made in the exercise of the provisions of this title may file a petition for review in the district court.
- (b) The petition shall be barred unless it is filed within thirty (30) days after the administrative order is final.
- (c) In the petition, the person may only allege that the administrative order was arbitrary, capricious or illegal.
- (d) The court shall:
 - i. Presume that the administrative order is valid;
 - ii. Review the record to determine whether the order was arbitrary, capricious, or illegal; and
 - iii. Affirm the administrative order if it is supported by substantial evidence in the record.
- (e) Within one hundred twenty (120) days after submitting the petition, the party petitioning for appeal shall request a copy of the record from the proceedings.

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- i. The city shall not submit copies of files to the reviewing court until the party petitioning for appeal has paid all required costs.
 - ii. The petitioning party's failure to properly arrange for copies of the record, or to pay the full costs for the record, within one hundred eighty (180) days after the petition for review was filed shall be grounds for dismissal of the petition.
- (f) The court review shall be limited to the record of the proceeding. The court may not accept or consider any evidence outside such record unless that evidence was offered to the administrative hearing officer and the court determines that the administrative hearing officer improperly excluded it. The court may call witnesses and take evidence if there is no record.
- (g) The filing of a petition for review with the district court does not stay execution of an administrative order. Before filing a petition, a person may request the administrative hearing officer to stay an administrative order. Upon receipt of a request to stay, the administrative hearing officer may order the administrative order to be stayed pending district court review if the administrative hearing officer finds such stay to be in the best interest of the city.

#-1-12. ABATEMENT.

- (a) Abatement of Violation: Any condition caused, maintained, or permitted to exist in violation of any provisions of the Revised Ordinances of Sandy City may be abated by the city pursuant to the procedures set forth in this title.
- (b) Enforcement Official Authority: An enforcement official is authorized to enter upon any property or premises to abate any violation of the Revised Ordinances of Sandy City pursuant to an administrative order when the Animal Control Director, or Community Development Director, or a designee with the approval of the Chief Administrative Officer. The administrative hearing officer may assess all actual and administrative costs incurred by the city for the abatement to the responsible person(s) and use any remedy available under the law to collect such costs. If additional abatements for the same or substantially similar code violations are necessary within one year of the date of any default judgment or administrative order, the enforcement official may assess additional costs against the responsible person(s) for the subsequent abatement(s).
- (c) The responsible person shall be liable for all actual and administrative costs associated with the abatement of the hazard. Costs may be recovered pursuant to this title through procedures set forth herein or through a court of competent jurisdiction.
- (d) Abatement By Responsible Person: If the city undertakes preparatory or other steps to perform an abatement pursuant to an administrative order, but the responsible person abates the violation before the city completes the abatement, the administrative hearing officer may still order the responsible person to pay all actual and administrative costs incurred by the city in undertaking preparatory or other steps to abate the violation.
- (e) Itemized Account: When the abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the city. The report shall contain the names and addresses of the responsible person, and the tax parcel numbers.
- (f) Notice: The enforcement official shall notify the responsible person(s) of the abatement action taken by the city. The notice shall be served within ten (10) business days of completion of the

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abatement and shall include a description of the work performed and an itemized accounting of costs, and shall demand full payment of all abatement costs, within twenty (20) days of the date of the notice.

- (g) Abatement Cost Hearing: Within ten (10) days of the notice provided for in subsection D of this section, the responsible person(s) may request a hearing; to contest the costs of the abatement, and the administrative hearing officer shall schedule and hold such a hearing according to the requirements of this title.

#-1-13. EMERGENCY ABATEMENT

(a) Requirements for Emergency Abatement:

- i. Whenever the administrative hearing officer determines that a hazard exists that presents a clear and immediate danger, the administrative hearing officer may issue an emergency administrative order directing one or more of the following actions be taken:
 - (1) Immediate evacuation of any and all owners, tenants and occupants, and prohibiting occupancy until all imminent hazards have been corrected;
 - (2) Posting of the premises as unsafe, substandard, or dangerous;
 - (3) Boarding, fencing, or securing any building or site;
 - (4) Razing and grading the premises to the extent necessary to remove any imminent hazard to the general public;
 - (5) Making emergency repairs;
 - (6) Confiscating endangered domesticated animals; or
 - (7) Taking any other action appropriate to eliminate or protect the public against an imminent hazard.
- ii. This emergency administrative order shall be served on the responsible person(s), together with an administrative citation, at or before the time the ordered actions are to take place.
- iii. The enforcement official has the authority, based on probable cause, to direct city personnel to enter the property without a search warrant or court order to accomplish the above listed acts to abate the imminent hazard.
- iv. The enforcement official shall pursue, and the administrative hearing officer shall order only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.
- v. The city may also pursue any other administrative or judicial remedy to abate violations.

- (b) Notice for Emergency Abatement: After an emergency abatement, the city shall provide the responsible person with the itemized statement of costs and notify the responsible person of the abatement action taken, and the location of any seized and removed personal property. This notice and itemized statement of costs shall be served within ten (10) business days after completion of the emergency abatement.

- (c) Request for Hearing in Case of Emergency Abatement: The responsible person(s) may request a code enforcement hearing to challenge the costs of an abatement. If timing of the emergency actions results in the notice of abatement being issued and served prior to a requested code enforcement hearing under the notice of violation, the hearing on the merits of the notice of

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violation can be consolidated with any requested hearing under this subsection to challenge a cost or abatement action.

#-1-14. NON-PROPERTY RELATED EMERGENCY LICENSE SUSPENSION OR REVOCATION, EMERGENCY CEASE AND DESIST ORDERS:

- (a) Authority: The administrative hearing officer may issue an administrative order suspending or revoking a license or permit and/or an emergency cease and desist order on an emergency basis if:
 - i. Credible facts known by, or presented to, the administrative hearing officer show an imminent hazard; and
 - ii. The imminent hazard requires immediate action by the city.
- (b) Requirements: In issuing an emergency order, the enforcement official shall:
 - i. Limit the emergency order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
 - ii. Issue a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the enforcement official's utilization of emergency proceedings; and
 - iii. Serve the emergency order together with an administrative citation on the persons who are required to comply with the order.

#-1-15. CIVIL PENALTIES:

- (a) Assessment:
 - i. Any person violating any provision of the Revised Ordinances of Sandy City may be subject to the assessment of civil penalties for each violation, except civil penalties shall not be assessed when a criminal case has been filed for the same violation.
 - ii. Interest at the default rate provided in the Utah Code shall be assessed on all outstanding civil penalties, costs and/or unpaid fee balances, compounded monthly, until the penalties and fees have been paid in full.
 - iii. Civil penalties for violations of any provision of the Revised Ordinances of Sandy City or Utah Code shall be assessed pursuant to the city's fee schedule.
 - iv. If a responsible person fails to comply with an administrative order within the time stated, civil penalties shall accrue as of the date of the administrative citation and shall continue to accrue and be owed to the city for each and every subsequent day of violation.
- (b) Failure to Pay Penalties: The failure of any person to pay civil penalties assessed within the specified time may result in the city pursuing any and all legal remedies to collect the civil penalties.

#-1-16. RECOVERY OF FINES AND COSTS:

- (a) Purpose:
 - i. The city council finds that there is a need to recover administrative costs incurred by enforcement officials to ensure compliance with the Revised Ordinances of Sandy City.

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- ii. The city council further finds that the assessment of costs in addition to penalty assessments is an appropriate method to recover actual costs of abating violations, performing re-inspections, retaining attorneys, preparing for and conducting hearings, title searches, and any additional costs incurred by the city for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil penalties.
- (b) Assessment of Re-inspection Fines: Notification of re-inspection fines and costs shall be described on the administrative citation.
- (c) Filing Fees: A request for hearing for any of the permitted purposes under this title shall be accompanied by a filing fee as prescribed in the city's fee schedule.
- (d) Failure to Timely Pay Filing Fees and Costs: The failure of any person to pay assessed costs or filing Fees by the deadline specified in the Revised Ordinances of Sandy City or in a city invoice will result in no hearing being scheduled.
- (e) Statement of Intent Regarding Recovery of Code Enforcement Penalties and Costs through Liens and Collection Actions: The city council finds that recordation of code enforcement tax liens will assist in the collection of penalties, fines and costs and otherwise achieve compliance with the Revised Ordinances of Sandy City. The city council further finds that collection of civil penalties and assessed costs is important in deterring future violations and maintaining the integrity of Sandy City code. The procedures established in this title shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of the Revised Ordinances of Sandy City.
- (f) Procedures for Tax Liens without a Judgment:
 - i. The city treasurer is authorized to record with the county treasurer a code enforcement tax lien against real property for the accrued fines, penalties and costs incurred during a city performed abatement.
 - ii. The failure of any person with a legal or financial interest in the property to actually receive the notice of code enforcement tax lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding penalties, costs and fines associated with an abatement.
- (g) Cancellation of Code Enforcement Tax Lien: Once payment in full is received for the outstanding fines, penalties and assessed costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the city treasurer shall either record a notice of satisfaction against the same property, or provide the property owner with the notice of satisfaction to be recorded. The notice of satisfaction shall include the same information as provided for in the original code enforcement tax lien. Such notice of satisfaction shall cancel the code enforcement tax lien.
- (h) Procedures for Tax Liens with a Judgment: Once a civil judgment has been obtained from the appropriate court approving fines, penalties and costs against the responsible person(s), the city treasurer may record that judgment as a code enforcement tax lien against any real property owned by the responsible person(s).
- (i) Recovery Of Costs Through Judicial Writs: After obtaining a civil judgment awarding fines, penalties and/or costs, the city treasurer may enforce the judgment by use of all appropriate legal means, including, but not limited to, garnishment of wages and accounts and foreclosure on real and personal property.

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ABATEMENT FUND:

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There is hereby established a revolving fund to be known as the abatement fund to defray costs of code violation abatements. The fund shall be reimbursed by collection of fines, assessed costs and filing fees collected pursuant to this title, together with accruing interest, if any. The city treasurer shall establish accounting procedures to ensure proper account identification, credit, and collection. This fund may be operated and used and expended to pay for abatements where the city must act and advance the costs. All monies recovered from the sale or transfer of seized or forfeited property shall be paid to the city treasurer, who shall credit the amount to the abatement fund.